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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35360

**SAN FRANCISCO BAY RAILROAD- MARE ISLAND
PETITION FOR DECLARATORY ORDER-LENNAR MARE ISLAND,
AND PURSUANT TO 49 U.S.C. §11123 AND 49 C.F.R. § 1146.1(b)(1)(i) FOR
EXPEDITED RELIEF DUE TO UNAUTHORIZED CESSATION OF
OPERATIONS**

**REPLY OF CITY OF VALLEJO TO SUPPLEMENTARY SUBMISSION OF SAN
FRANCISCO BAY RAILROAD - MARE ISLAND**

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Dated: September 15, 2010

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The City of Vallejo (the City) hereby submits this Reply to the Supplementary Submission (*SFBR-MI Supplement*) of San Francisco Bay Railroad – Mare Island (SFBR-MI), filed on August 26, 2010, in the above-captioned proceeding. The City submits this Reply in order to clarify the record in this proceeding in response to various characterizations of the City's actions contained in the *SFBR-MI Supplement*.

The City generally supports the provision of freight rail service to Mare Island in both the short and long term, and Lennar Mare Island LLC's (LMI) ongoing redevelopment project on the island, as set forth in pleadings previously filed in this proceeding. *San Francisco Bay Railroad – Mare Island – Petition for Declaratory Order – Lennar Mare Island and Pursuant to 49 U.S.C. § 11123 and 49 C.F.R. § 1146.1(b)(1)(i) for Expedited Relief due to Unauthorized Cessation of Operations*, STB Finance Docket No. 35360, Reply of the City of Vallejo in Opposition to Request for Expedited Relief (Filed Mar. 22, 2010) (*City Reply I*), at 9-10.

The City has previously responded to SFBR-MI's arguments concerning the nature of freight rail service to Mare Island prior to SFBR-MI's commencement of service to Alstom. *City Reply I* at 4, 7. The City notes that the *SFBR-MI Supplement* addresses questions of access to Mare Island as between SFBR-MI and LMI, and reiterates that it is willing to facilitate discussions between SFBR-MI and LMI in order to further the goals of redevelopment and to ensure the provision of freight rail service to the island. *City Reply I* at 9-10. Following are the City's clarification of several items contained in the *SFBR-MI Supplement*:

1. Paragraph 2 of the Declaration of David Gavrich, attached to the *SFBR-MI Supplement*, contains the assertion that "SFBR-MI was formed in 2009 at the request of Alstom Train Life Services and the City of Vallejo, California." This assertion overstates the role of the City in the corporate formation of SFBR-MI. The City encouraged San Francisco Bay Railroad to negotiate with Alstom to provide service to that facility, and to explore with LMI the possibility of San Francisco Bay Railroad's becoming LMI's operator for Mare Island generally. However, the formation of SFBR-MI was a business decision on the part of San Francisco Bay Railroad, and not the result of any specific request by the City. SFBR-MI is a commercial entity affiliated with San Francisco Bay Railroad and is wholly independent of the City.
2. Also in Paragraph 2 of the Declaration, Mr. Gavrich describes SFBR-MI as "having worked diligently with the City and Alstom to get the necessary contracts in place and to file a notice of exemption with the STB

for operating authority as both Alstom and the City wanted the resulting railroad to serve multiple customers on Mare Island, not just Alstom.” Again, this assertion implies the City played a greater role in the events described than it actually did. As discussed above, the City encouraged San Francisco Bay Railroad to take any regulatory and transactional steps necessary to commence rail service and to enter into contracts with rail customers. The City executed a Rail Agreement with SFBR-MI as of March 9, 2009, to permit the railroad to operate on the portion of the track owned by the City, which allows access to Mare Island. However, contrary to SFBR-MI’s assertion, the City was not involved in SFBR-MI’s submission of its Notice of Exemption in Finance Docket No. 35304 and only learned of the Notice after the fact. Whether or not to seek STB authorization for its operations was wholly SFBR-MI’s decision. The City did not direct or require SFBR-MI to file the Notice.

3. Finally, a statement appearing in Paragraph 4 of the Declaration of David Gavrich, asserts “[SFBR-MI’s] agreements with the City and Alstom require SFBR-MI to provide service to all rail customers on Mare Island.” This statement mischaracterizes the terms and conditions of the Rail Agreement, which conditionally permits, but does not require, SFBR-MI to conduct operations over the track owned by the City. The relevant passages of the Rail Agreement between the City and SFBR-MI appear at Section I.A, as follows:

The City desires the continuous use, inspection, maintenance and operation by Railroad of approximately 2.5 miles of City-owned track

("City Track") of varying width, beginning on or near "O" Street in Mare Island and continuing across the Wichels Causeway "Causeway"(contained within Parcel XXI-A as indicated in the U.S. Dept of Navy's Finding Of Suitability to Transfer (FOST», turning northward, proceeding along roughly paralleling Couch Street until it meets up with a second set of tracks (currently owned by another entity) in the vicinity of the Flosden Yard near El Sendero Ct. City Track is partially contained on City property within Zone 19 (Railroad Spur) as shown in Figure 1 attached to this Agreement. There is a structure within Zone 19, a 95 year old steel bridge (Sacramento Street Overpass) "Bridge" which spans the railroad spur at Sacramento Street and Farragut Avenue. Zone 19 is located in the City of Vallejo and is bounded by commercial and residential parcels to the east and west; to the north by the Southern Pacific Railroad Right-of-Way and to the south by Tennessee Street and Wilson Avenue junction as shown on Figure I ("City Track") to service Mare Island businesses, tenants and residents. Accordingly, City, in consideration of the stated conditions and agreements in this Rail Agreement, hereby grants permission to Railroad to carry on the uses and obligations described in this Rail Agreement on City Track. The parties acknowledge that the relationship created hereby is that of a licensor granting Railroad a privilege to perform the activities permitted hereunder upon City property. This Rail Agreement conveys to Railroad a nonexclusive right to possession or use of the City Track and an exclusive right to be the only railroad to operate on City Track and is nonassignable.

Accordingly, the City emphasizes that its agreement with SFBR-MI is permissive as to the conduct of any freight rail operations by SFBR-MI, and leaves to SFBR-MI the responsibility of making whatever additional arrangements are necessary to commence service.

WHEREFORE, the City respectfully requests this Board to accept the Reply of the City of Vallejo, California, that is tendered herewith.

Respectfully submitted,



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Attorneys for City of Vallejo

Dated: September 15, 2010

VERIFICATION

I, Craig Whittom, Assistant City Manager / Community Development of the City of Vallejo, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have reviewed the Reply attached hereto and the factual statements are true based upon my personal knowledge, based upon documents I have seen, and where I do not have personal or direct knowledge, I believe the assertions to be correct.



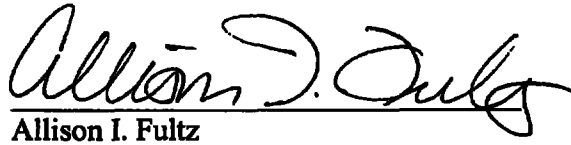
Craig Whittom

Certificate of Service

I hereby certify that I have this 15th day of September, 2010, caused to be served a copy of the foregoing REPLY OF THE CITY OF VALLEJO, CALIFORNIA, TO THE SUPPLEMENTARY SUBMISSION OF SAN FRANCISCO BAY RAILROAD – MARE ISLAND to be served by first class mail, postage prepaid upon the following:

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